

REMARKS

Claims 1-16, 18 and 20 are pending in this application. By this Amendment, claims 1-16, 18 and 20 are amended. The amendments add no new matter. Claims 17 and 19 are canceled without prejudice to, or disclaimer of, the subject matter recited in those claims. Reconsideration of the application based on the above amendments and the following remarks is respectfully requested.

Applicants appreciate the courtesies shown to Applicants' representative by Examiner Smith in the September 30, 2005 personal interview. Applicants' separate record of the substance of the interview is incorporated into the following remarks.

The Office Action, on page 2, rejects claims 17 and 19 under 35 U.S.C. §101 because the claimed invention is allegedly directed to non-statutory subject matter. The cancellation of claims 17 and 19 renders this rejection moot.

The Office Action, on page 3, rejects claims 1-20 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Application Publication No. US 2001/0047322 A1 to Plate et al. (hereinafter "Plate"). This rejection is respectfully traversed.

Plate teaches a method and system for matching requests with capabilities for goods and/or services under a set of constraints which arise from conditions among the requests and capabilities, specifically receiving alternative requests and bids in order to determine combinations of alternatives that satisfy the proposed conditions (Abstract). The Office Action states that Plate "discloses a collaborative exchange in which buyers and sellers enter information on supply and demand." This information includes "preferences, capabilities and constraints, locations and flexibility, prices and costs. Demand requests, fulfillment responses, volumes, locations, lead-times, delivery times, preferences, etc. ... are all linked (see paragraph [0028]).

Plate teaches, at paragraph [0054] that only "a few" of the "many possible specifications" may be included on any particular request. As such, Plate teaches, or at least would have suggested, a "best fit" match of the enumerated "few" specifications.

Independent claim 1, and in like manner independent claims 6, 11, 12, 16, 18 and 20, recites, among other features, receiving a desired delivery time as the essential criteria for selecting at least one of a plurality of commodities; and selecting at least one of the plurality of commodities based on actual delivery times of the plurality of commodities stored in a memory and the received delivery time so that an actual delivery time of a selected at least one of the plurality of commodities must meet the received desired delivery time. Plate cannot reasonably be considered to teach, or even to have suggested, particularly in its disclosure of "only a few specifications" that may be included in a request, that such a request can include a single essential criteria, i.e., a desired delivery time.

For at least this reason, Plate cannot be reasonably considered to teach, or to have suggested, all of the combinations of features recited in independent claims 1, 6, 11, 12, 16, 18 or 20. Additionally, claims 2-5, 7-10 and 13-15 are also neither taught, nor would they have been suggested, by Plate for at least the respective dependence of these claims on independent claims 1, 6 and 12, as well as for the separately patentable subject matter which each of these claims recites.

It is also respectfully noted that, because Plate's filing date is after that of this application, only that portion of the Plate reference that is supported by Provisional Applications Nos. 60/177,926 and 60/177,927 may be used as prior art against this application. If Plate is relied on in any repeated or new rejection, Applicants require that the Office Action cite the passages of the Provisional applications that are believed to support such rejection.

Applicants' representative presented the above arguments traversing the prior art rejections of the Office Action to Examiner Smith during the September 30 personal interview. The Examiner did not rebut any of Applicants' arguments and indicated that he would more fully consider the claim amendments and the arguments on submission of a formal reply.

In view of the foregoing, Applicants respectfully submit that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 1-16, 18 and 20 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the telephone number set forth below.

Respectfully submitted,



James A. Oliff

Registration No. 27,075

Daniel A. Tanner, III

Registration No. 54,734

JAO:DAT

Date: October 6, 2005

OLIFF & BERRIDGE, PLC
P.O. Box 19928
Alexandria, Virginia 22320
Telephone: (703) 836-6400

<p>DEPOSIT ACCOUNT USE AUTHORIZATION Please grant any extension necessary for entry; Charge any fee due to our Deposit Account No. 15-0461</p>
